



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

JUN 21 2005

Ref: 8ENF-W-NP

CERTIFIED MAIL 7003-2260-0001-7791-5862

RETURN RECEIPT REQUESTED

Mark Melotz
Melotz Trucking, Inc.
P.O. Box 17012
Missoula, MT 59808

Notice of Proposed Assessment of Class I Civil
Penalty under Section 309 of the Clean Water Act

Dear Mr. Melotz:

Enclosed is a document entitled Penalty Complaint and Notice of Opportunity for Hearing ("Complaint"). The United States Environmental Protection Agency ("EPA") is issuing this Complaint against Melotz Trucking, Inc., ("Respondent") pursuant to section 309 of the Clean Water Act ("Act"), 33 U.S.C. § 1319. In the Complaint, EPA alleges that Respondent violated section 301(a) of the Act, 33 U.S.C. § 1311(a). The Complaint proposes that a penalty of \$5,000 be assessed against Respondent for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint or the appropriateness of the proposed penalty. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA follows in administrative civil penalty assessments.

If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Region VIII Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

If you do not file an answer within 30 days [see 40 C.F.R. § 22.15(d)], you may be found in default. A default judgment may impose the full penalty proposed in the Complaint of \$5,000.

EPA encourages the consideration of Supplemental Environmental Projects (SEPs) in conjunction with civil penalties, in the settlement of civil enforcement cases. If you are interested in this possibility, we have enclosed a copy of the EPA policy that describes the possibilities and limitations of SEPs in such matters. An agreement to perform a SEP may result in a lower penalty amount.

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations (See 40 C.F.R. § 22.18). If a mutually satisfactory settlement can be reached, it will be formalized in a consent agreement signed by you and the delegated authority for EPA. Upon final approval of the consent agreement by the Regional Judicial Officer, Respondent will be bound by the terms of the consent agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA.

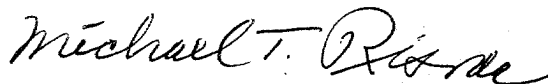
A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, containing information on compliance assistance resources and tools available to small businesses, is enclosed with this letter. SBREFA does not eliminate your responsibility to comply with the Act and respond to this Complaint.

If you have any questions regarding this letter, the enclosed Complaint, or any other matters pertinent to compliance with the Act, the most knowledgeable people on my staff regarding these matters are Aaron Urdiales, Technical Enforcement, at (303) 312-6844 or Marc Weiner, Enforcement Attorney, at (303) 312-6913. If you are represented by an attorney, or to request a settlement conference, please call Marc Weiner. Please note that arranging for a settlement meeting does not relieve you of the need to file a timely answer to EPA's Complaint.

Sincerely,



Melanie Pallman, Unit Chief
NPDES Enforcement Unit
Office of Enforcement, Compliance
and Environmental Justice



Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

1. Penalty Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice (40 C.F.R. Part 22)
3. Supplemental Environmental Projects Policy
4. Small Business Regulatory Enforcement and Fairness Act Information

cc: Tina Artemis, Regional Hearing Clerk
Victoria Marquis, Montana DEQ

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2005 JUN 21 AM 8:15

Docket No. CWA-08-2005-0033

In the Matter of:

Melotz Trucking, Inc.
A Montana corporation,

Respondent.

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**ADMINISTRATIVE PENALTY COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING**

**Proceeding to Assess Class I Civil Penalty Under
Section 309(g) of the Clean Water Act**

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (the "CWA" or "Act"), 33 U.S.C. §1319(g). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. (Code of Federal Regulations) part 22.
2. The undersigned United States Environmental Protection Agency ("EPA") official has been properly delegated the authority to issue this complaint. EPA has consulted with the State of Montana as required by section 309(g)(1) of the Act, 33 U.S.C. §1319(g)(1).
3. The EPA alleges that the Respondent, Melotz Trucking, Inc. ("Respondent"), has violated the Act and its implementing regulations and proposes the assessment of a civil penalty, as more fully described below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. The Respondent has the right to a public hearing before the Regional Judicial Officer to disagree with any allegation EPA has made in this complaint and/or the appropriateness of the penalty EPA has proposed.
5. To assert its right to a hearing, the Respondent must file a written answer (and one copy) with the Regional Hearing Clerk of EPA Region 8 (999 18th Street, Suite 300, Mail Code 8RC, Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts the Respondent disputes, and its request for a public hearing. Please see section 22.15 of the Rules of Practice for more information on what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE THE RESPONDENT'S RIGHT TO DISAGREE**

WITH THE ALLEGATIONS AND/OR PROPOSED PENALTY. IT MAY ALSO RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE FULL PENALTY PROPOSED IN THE COMPLAINT OR THE MAXIMUM PENALTY AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. The Respondent may resolve this proceeding at any time by paying the penalty amount proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in this complaint. Such payment waives the Respondent's right to contest the allegations and to appeal any final order resulting from this complaint. See section 22.18 of the Rules of Practice for more explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

7. EPA encourages informal settlement conferences. If the Respondent wishes to pursue the possibility of settling this matter, or has any other questions, the Respondent should contact Marc Weiner, Enforcement Attorney, by telephone at 1-800-227-8917; extension 6913 or 303-312-6913, or by mail at the address below. **Please note that contacting this attorney or requesting a settlement conference does NOT delay the running of the 30-day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action and to each count of this complaint:

8. In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402, 33 U.S.C. §1342.
9. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization from EPA, states may permit discharges into navigable waters, subject to specific terms and conditions.
10. EPA has authorized Montana under section 402(b) of the CWA and 40 C.F.R. part 123 to assume primary responsibility for issuing NPDES permits for discharges in that state.

11. Respondent is a Montana corporation doing business in the State of Montana and registered with the Montana Secretary of State.
12. Respondent is a "person" as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
13. As a "person," the Respondent is subject to the requirements of the Act and 40 C.F.R. part 122.
14. Respondent owns and operates a trucking company that provides de-icing and dust abatement products and services, which is located at 9780 Summit Dr. Missoula, Montana 59808.
15. According to the August 3, 2004 crash investigation report, accident number 04-000-1211-08-01, and the November 11, 2004 report submitted by Atlatl, Inc, a semi-truck pulling a double tanker trailer owned by the Respondent was traveling westbound on interstate 90 near MP 175.5, Garrison, MT, when a nut on the hitch pin of the second tanker trailer came off and subsequently caused the second trailer to disengage from the unit and roll onto its top in the passing lane of the west bound lanes. The tanker trailer leaked its contents, Magnesium Chloride, into the median which drained into the Little Blackfoot River.
16. According to the January 13, 2005 response to the EPA information request, the second tanker trailer in the aforementioned paragraph 15 contained approximately 2000 gallons of Magnesium Chloride 26 to 35 percent solution, which is and was at relevant times a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
17. Magnesium Chloride is a "pollutant" as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
18. The runoff due to the spill from the Respondent's tanker truck is a "discharge of a pollutant" as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.
19. The Little Blackfoot River is a "navigable water" and "waters of the United States," as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2, respectively.
20. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, except in compliance with certain sections of the Act.

COUNT 1

21. The discharge described in paragraph 15 was not permitted under the CWA Section 402, 33 U.S.C. §1342. No permit authorizing the Respondent's discharge of a pollutant to the Little Blackfoot river has been issued pursuant to 33 U.S.C. §1342. Accordingly, each day of discharges is a separate violation of the CWA Section 301, 33 U.S.C. §1311, which prohibits the discharges of any pollutant to waters of the U.S. except in conformity with a permit issued under the CWA.
22. The Respondent's discharge as described above violated Section 301(a) of the Act, 33 U.S.C. §1311(a).

PROPOSED CIVIL PENALTY

Section 309(g) of the Act, 33 U.S.C. § 1319(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 and 40 C.F.R. parts 19 and 27, authorizes the EPA to assess a civil penalty of up to \$11,000 per violation with a maximum for all violations of \$27,500 for violations of the Act occurring after January 30, 1997 and prior to March 15, 2004, and a maximum for all violations of \$32,500 for violations occurring on or after March 15, 2004. Section 309(g)(3) of the Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.

In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of \$5,000 be assessed against Respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

The August 3, 2004 Melotz Trucking roll over accident lead to approximately 2000 gallons of Magnesium Chloride to be discharged from the tanker trailer into the center median of Interstate 90, from there, the pollutant ran down the stream bank and into the Little Blackfoot River. Photos taken of the sight show a visually evident path of impacted vegetation leading up to and into the Little Blackfoot River. Conductivity tests done on soil samples taken from the impacted sight also showed highly elevated conductivity levels, especially near/on the stream bank. Magnesium Chloride is harmful to freshwater aquatic species and to plants that are not saline tolerant. Sufficient site remediation has been completed by the Respondent; however, there was an unknown quantity of the pollutant that discharged into the Little Blackfoot River. A site assessment could not be performed on the impact to the aquatic life in the river because the Respondent did not notify the National Response Center at the time of the accident. The National Response Center was eventually notified, however, flowing water had already transferred the pollutant and its impact down stream.

Prior Compliance History

This Complaint is the first enforcement action EPA Region 8 has issued to the Respondent requiring compliance with the applicable CWA regulations.

Degree of Culpability

Respondent could have prevented the discharge of a pollutant into the Little Blackfoot River if the tanker trailer would have been properly assembled and/or maintained. Negligence on the part of the Respondent led to the nut on the hitch pin of the tanker trailer coming off and consequently causing the tanker trailer to disengage from the semi-truck unit.

Economic Benefit

Economic benefit was considered to be negligible and, therefore, an analysis of economic benefit was not performed. However, it is possible that the Respondent received economic benefit from its failure to properly assemble and/or maintain the tanker trailer used to transport Magnesium Chloride. Inadequate assembling and/or maintenance of the aforementioned tanker trailer could directly lead to reduced service expenditures.

Ability to Pay

The proposed penalty was not reduced based on the statutory factor of an inability to pay. However, EPA will consider any new information the Respondent may present regarding the Respondent's ability to pay the penalty proposed in this complaint.

Other Matters that Justice May Require

At this time, EPA has not made an adjustment regarding this statutory factor.

As required by section 309(g)(4) of the Act, 33 U.S.C. §1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

If there is a hearing on this matter, it would be before the Regional Judicial Officer (RJO) for EPA Region VIII, who will be responsible for deciding whether EPA's proposed penalty is appropriate. The RJO is not bound by the penalty proposed by EPA and may assess a penalty above the proposed amount, up to the \$11,000 per violation authorized by the Act.

To discuss settlement or ask any questions about this case or process, the Respondent should contact Marc Weiner, Enforcement Attorney, by telephoning 303-312-6913, or by writing to the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 300 (ENF-L)
Denver, CO 80202

Date: June 21, 2005

By: Melanie J. Pallman
Melanie Pallman, Unit Chief
NPDES Enforcement Unit
Office of Enforcement, Compliance
and Environmental Justice

Date: June 21, 2005

By: Michael T. Risner
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]
- 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
- 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
- 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
- 22.44 [Reserved]
- 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.
- 22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

- 22.50 Scope of this subpart.
- 22.51 Presiding Officer.
- 22.52 Information exchange and discovery.

Authority: 7 U.S.C. 136f; 15 U.S.C. 2610(c), 2615(a) and 2647; 33 U.S.C. 1319(g), 1321(b)(6), 1342(a), 1415(a) and (f) and 1418; 42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), 300j-6(a), 6912, 6925, 6928, 6945(c)(2), 6961, 6991b, 6991e, 7413(d), 7524(c), 7545(d), 7547(d), 7601, 7607(a), 9609, 11045, and 14304.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 10 1998

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Final Supplemental Environmental Projects Policy.

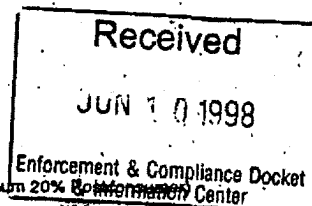
FROM: Steven A. Herman
Assistant Administrator

TO: Regional Administrators

I am pleased to issue the final Supplemental Environmental Projects (SEP) Policy, the product of almost three years of experience implementing and fine-tuning the 1995 Interim Revised SEP Policy. It is also the product of the cooperative effort of the SEP Workgroup, comprised of representatives of the Regions, various OECA offices, OGC and DOJ. This Policy is effective May 1, 1998, and supersedes the Interim SEP Policy.

Most of the changes made to the Interim SEP Policy are clarifications to the existing language. There are no radical changes and the basic structure and operation of the SEP Policy remains the same. The major changes to the SEP Policy include:

1. Community Input. The final SEP Policy contains a new section to encourage the use of community input in developing projects in appropriate cases and there is a new penalty mitigation factor for community input. We are preparing a public pamphlet that explains the Policy in simple terms to facilitate implementation of this new section.
2. Categories of Acceptable Projects. The categories of acceptable projects have remained largely the same, with some clarifications and a few substantive changes. There is now a new "other" category under which worthwhile projects that do not fit within any of the defined categories, but are otherwise consistent with all other provisions of the SEP Policy, may qualify as SEPs with advance OECA approval. The site assessment subcategory has been revised and renamed to "environmental quality assessments." The environmental management system subcategory has been eliminated.





U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

